

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEBRASKA

HARTMANN HAY COMPANY, LLC,)	
)	
Plaintiff,)	8:16CV123
)	
v.)	
)	
WILBUR-ELLIS COMPANY,)	
)	
Defendant.)	
)	
WILBUR-ELLIS COMPANY, a)	
California corporation,)	
)	
Plaintiff,)	8:16CV125
)	
v.)	
)	
KENT HARTMANN, an individual,)	MEMORANDUM AND ORDER
)	
Defendant.)	
)	

This matter is before the Court on a stipulation from Hartmann Hay Company, LLC ("Hartmann Hay"), Kent Hartmann ("Hartmann"), and Wilbur-Ellis Company, n/k/a Wilbur-Ellis Company LLC ("Wilbur-Ellis"). The parties seek to consolidate *Hartmann Hay Co., LLC v. Wilbur-Ellis Co.*, Case No. 8:16CV123 ("Hartmann Hay Case") and *Wilbur-Ellis Co. v. Kent Hartmann*, 8:16CV125 ("Wilbur-Ellis Case"). See Case No. 8:16CV123, Filing No. 27 and Case No. 8:16CV125, Filing No. 22. After review of the stipulation and relevant law the Court finds as follows.

Background

Hartmann Hay initially filed the Hartmann Hay case in the District Court of Hall County, Nebraska. See Case No. 8:16CV123, Filing No. 1-1. On March 23, 2016, Wilbur-Ellis removed the Hartmann Hay Case to this Court (Case No. 8:16CV123, Filing No. 1). Also on March 23, 2016, Wilbur-Ellis filed the Wilbur-Ellis case against Hartmann, a member of Hartmann Hay, in this Court. See Case No. 8:16CV125, Filing No. 1.

First, the parties seek to consolidate the Hartmann Hay case and the Wilbur-Ellis case with the Hartmann Hay case designated as the lead case. The parties agree that the two cases share common issues of law and fact making consolidation appropriate under Fed. R. Civ. P. 42(a) (Case No. 8:16CV123, Filing No. 27 at 2 and Case No. 8:16CV125, Filing No. 22 at 2). Second, the parties agree that "Hartmann Hay shall be the lead Plaintiff in the Consolidated Case with the initial burden of proof on its claims at trial." *Id.* Third, the parties agreed to and proposed deadlines for the progression of the consolidated case (*Id.* at 2-3). Finally, the parties agreed to and proposed to amend the Rule 26(f) Report to include "discussion of the elements of [defendant's] Tenth, Eleven and Twelfth Affirmative Defenses that were inadvertently omitted from the PDF when filed." *Id.* at 3-4.

Discussion

Federal Rule of Civil Procedure 42(a) allows for consolidation of cases involving common issues of law or fact. Fed. R. Civ. P. 42(a). "The district court is given broad discretion to decide whether consolidation would be desirable and the decision inevitably is contextual." *Cisler v. Paul A. Willsie Co.*, Case No. 8:09CV365, 2010 WL 3237222, at *2 (D. Neb. Aug. 13, 2010).

After review of the matter, the Court concludes that consolidation of the Hartmann Hay Case and the Wilbur-Ellis case is appropriate under Rule 42(a). Accordingly, these cases will be consolidated with the Hartmann Hay case designated as the lead case. In addition, Hartmann Hay will be designated as the lead plaintiff in accordance with the joint stipulation.

On November 21, 2016, following the filing of the stipulation, the Court issued an order setting the schedule for the final progression of this case. Therefore, the Court will not readdress the proposed dates at this time. Finally, the Rule 26(f) Report will be deemed amended as provided.

IT IS ORDERED:

1) The Hartmann Hay case and the Wilbur-Ellis case are consolidated.

2) The Hartmann Hay case is designated as the lead case with Hartmann Hay designated as the lead plaintiff.

3) The Rule 26(f) report is amended as provided in Case No. 8:16CV123, Filing No. 27 at 3-4.

DATED this 11th day of January, 2017.

BY THE COURT:

/s/ Lyle E. Strom

LYLE E. STROM, Senior Judge
United States District Court